



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 12, 1998

Mr. Saul Pedregon
Assistant City Attorney
Criminal Law and Police Division
City of Dallas
City Hall
Dallas, Texas 75201

OR98-2682

Dear Mr. Pedregon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119431.

On August 6, 1998, the Dallas Police Department ("the department") received a request for incident reports 0295249-D and 0655367-A. On August 24, 1998 our office received your letter, dated August 20, 1998 and post marked August 21, 1998, requesting an opinion on your contention that these items were excepted from disclosure pursuant to section 552.108 of the Government code.

To be timely filed, a request for opinion must be made not later than the 10th business day after the date of receiving the written request. Government code section 552.301. A post office cancellation mark dated on or before that date establishes timeliness. Government code section 552.308. However, in this instance the department states, and we agree, that it has not sought an open records decision from this office within the statutory ten-day deadline. The department's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. Demonstration that the information is deemed confidential by some other source of law or the assertion of a third party's privacy right are examples of recognized compelling reasons sufficient to overcome the presumption. Open Records Decision 150 (1977).


You assert section 552.108 as the sole basis for withholding the information. This section provides a permissive exception to disclosure for information held by a law

enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Permissive exceptions are waived by a failure to timely request an opinion pursuant to section 552.301 of the Government code. Open Records Opinion 473 (1987).

In the instant case, as no compelling reason for withholding the records has been shown, the information is presumed public and must be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael J. Burns", with a stylized flourish at the end.

Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 119431

Enclosures: Submitted documents

cc: Ms. Annette Mumphrey
P.O. Box 151775
Dallas, Texas 75315
(w/o enclosures)